Additional Views of Rep. Charles T. Canady

"Facts are stubborn things; and whatever may be our wishes, our inclinations, or the dictates of our passions, they cannot alter the state of facts and evidence." — John Adams.

In the case before the Committee, the facts show a sustained pattern of lying under oath and multiple acts of obstruction of justice by the President of the United States. First, the President through obstruction of justice and false statements under oath sought to conceal the truth in a sexual harassment case in order to defeat the rights of the plaintiff in that case. Then, the President engaged in a nearly year-long cover-up of those earlier offenses — a cover-up that included lying under oath before a federal grand jury and in statements submitted to the Judiciary Committee.

All the attacks on the investigation conducted by the Independent Counsel and on the proceedings of the Judiciary Committee do nothing to alter the facts of the case against William Jefferson Clinton. All the attempts to palliate cannot alter the stubborn facts of the case against the President. The facts cannot be wished away, they cannot be ignored, they cannot be treated as trivial. The facts make a compelling case for impeachment.

The President has engaged in a course of conduct which evidences a calculated contempt for the rule of law. He has directly and repeatedly violated his oath of office to "faithfully

execute the office" of President, and breached his duty to "take care that the laws be faithfully executed." He has repeatedly put his selfish personal interests ahead of the dignity and integrity of the high office entrusted to him by the people.

Soon after the adoption of the Constitution, Alexander Hamilton wrote that "an inviolable respect for the Constitution and Laws" is the "most sacred duty and the greatest source of security in a Republic." Hamilton understood that respect for the Constitution itself grows out of a general respect for the law. And he understood the essential connection between respect for law and the maintenance of liberty in a Republic. Without respect for the law, the Constitution is without an adequate foundation. Without respect for the law, our freedom is at risk. Thus, according to Hamilton, those who "set examples which undermine or subvert the authority of the laws lead us from freedom to slavery . . ."

President Clinton by his persistent and calculated misconduct has set a pernicious example of lawlessness — an example which by its very nature subverts respect for the law. His perjury and obstruction of justice have become a byword. The perverse example he has set has the inevitable effect of undermining the integrity of the judicial process.

Contrary to the claims of his defenders, the offenses of which the President is guilty are not mere private offenses. Although his crimes were occasioned by his personal misconduct, when the President attempted to obstruct justice and wilfully gave false testimony under oath he committed public wrongs. Perjury and obstruction of justice are not private matters; they are

crimes against the system of justice.

Since the early days of our Republic, perjury has been considered a grave offense against justice. John Jay, the first Chief Justice of the United States, said that "there is no crime more extensively pernicious to society" than perjury. According to Jay, perjury "discolors and poisons the streams of justice, and by substituting falsehood for truth, saps the foundations of personal and public rights."

The maintenance in office of a persistent perjurer is inconsistent with maintenance of the rule of law. The impeachment process is intended to preserve the rule of law against the corrupt conduct of the Chief Executive and other high officials. The corrupt conduct of President Clinton is exactly the sort of conduct that the impeachment power was designed to address. The impeachment power must be used to call him to account for his crimes.

Nixon Tax Fraud Article of Impeachment

In their submission to the Committee, Counsel for the President argue that the failure in 1974 of the Committee to adopt an article of impeachment against President Nixon for tax fraud supports the claim that current charges against President Clinton do not rise to the level of impeachable offenses. The President's lawyers contend that the tax fraud article against President Nixon "was not approved because the otherwise conflicting views of the Committee majority and minority were in concord: submission of a false tax return was not so related to exercise of the

Presidential Office as to trigger impeachment."

Wayne Owens and Robert F. Drinan, who were members of the Committee in 1974, have recently testified to the Committee in support of this argument. In a recent opinion piece they assert that in 1974 the Committee decided by a vote of 26 to 12 that President Nixon "should not be impeached for tax fraud because it did not involve official conduct or abuse of presidential powers."

It is, of course, undisputed that the Judiciary Committee rejected the proposed tax fraud article against President Nixon. It is also undisputed that certain Committee members stated the view that tax fraud would not be an impeachable offense. That view is illustrated by the comments of Rep. Waldie that in the tax fraud article there was "not an abuse of power sufficient to warrant impeachment . . . ." Similar views were expressed by Rep. Hogan and Rep. Mayne. Rep. Railsback took the position that there was "a serious question" whether misconduct of the President in connection with his taxes would be impeachable.

Other members who opposed the tax fraud article based their opposition on somewhat different grounds. Rep. Thornton based his opposition to the tax fraud article on the "view that these charges may be reached in due course in the regular process of law." Rep. Butler stated his view that the tax fraud article should be rejected on prudential grounds: "Sound judgment would indicate that we not add this article to the trial burden we already have."

The record is clear, however, that the overwhelming majority of those who expressed a view in the debate in opposition to the tax fraud article based their opposition on the insufficiency of the evidence, and not on the view that tax fraud, if proven, would not be an impeachable offense.

The comments of Wayne Owens in the debate in 1974 are quite instructive. Those comments directly contradict the view that Mr. Owens has expressed in recent days. Although Mr. Owens in 1974 expressed his "belief" that President Nixon was guilty of misconduct in connection with his taxes, he clearly stated his conclusion that "on the evidence available" Mr. Nixon's offenses were not impeachable. Mr. Owens spoke of the need for "hard evidence" and discussed his unavailing efforts to obtain additional evidence that would tie "the President to the fraudulent deed" or that would otherwise "close the inferential gap that has to be closed in order to charge the President." He concluded his comments in the 1974 debate by urging the members of the Committee "to reject this article" "based on that lack of evidence."

In addition to Mr. Owens, eleven members of the Committee stated the view that there was not sufficient evidence of tax fraud to support the article against President Nixon. (Wiggins: "fraud . . . is wholly unsupported in the evidence." McClory: "no substantial evidence of any tax fraud." Sandman: "There was absolutely no intent to defraud here." Lott: "mere mistakes or negligence by the President in filing his tax returns should clearly not be grounds for impeachment." Maraziti: discussing absence of evidence of fraud. Dennis: "no fraud has been found." Cohen: questioning whether "in fact there was criminal fraud involved." Hungate: "I

think there is a case here but in my judgment I am having trouble deciding if it has as yet been made." Latta: only "bad judgment and gross negligence." Fish: "There is not to be found before us evidence that the President acted wilfully to evade his taxes." Moorhead: "there is no showing that President Nixon in any way engaged in any fraud.")

The group of those who found the evidence insufficient included moderate Democrats like Rep. Hungate and Rep. Owens, as well as Republicans like Rep. Fish, Rep. Cohen, and Rep. McClory, who all supported the impeachment of President Nixon.

In light of all these facts, it is not credible to assert that the Committee in 1974 determined that tax fraud by the President would not be an impeachable offense. The failure of the Committee to adopt the tax fraud article against President Nixon simply does not support the claim of President Clinton's lawyers that the offenses charged against him do not rise to the level of impeachable offenses.

In the Committee debate in 1974 a compelling case was made that tax fraud by a President — if proven by sufficient evidence — would be an impeachable offense. Rep. Brooks, who later served as chairman of the Committee, said:

> No man in America can be above the law. It is our duty to establish now that evidence of specific statutory crimes and constitutional violations by the President of the United States will subject all Presidents now and in the future to impeachment . . . .
>
> No President is exempt under our U.S. Constitution and the laws of the United States from accountability for personal misdeeds any

> more than he is for official misdeeds. And I think that we on this Committee in our effort to fairly evaluate the President's activities must show the American people that all men are treated equally under the law.

Prof. Charles Black stated it succinctly: "A large-scale tax cheat is not a viable chief magistrate." What is true of tax fraud is also true of a persistent pattern of perjury by the President. An incorrigible perjurer is not a viable chief magistrate.